



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title):

ETA 283.08.211 Sales Tax Liability on Lease-Purchase Agreements
ETA 520.04.211 Water Conditioning Services

Date last adopted:

ETA 283 September 30, 1966
ETA 520 October 10, 1980

Reviewer: **JoAnne Gordon**

Date review completed: **September 27, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

ETA 283 explains that when a lessee receives title to leased property under a lease-purchase plan, sales tax applies only on the additional consideration paid over and above the amount of the rental payments. It also explains that sales tax applies to gross income, which includes amounts for interest or carrying charges and property taxes that are paid by the lessee.

ETA 520 provides rationale for applying the true object test (although it never specifically refers to the term "true object) to determine whether a transaction is a rental of tangible personal property or a service.

2. Need:

YES	NO	
	X	Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed?



		(If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
	X	Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington’s citizens? (If the response is “no”, the recommendation must be to repeal the document.)

Please explain.

ETA 283 should be cancelled. This ETA was issued before the 1996 revision to WAC 458-20-211 that provided the criteria for determining whether a lease is a true lease and taxable as a rental or lease of tangible personal property or a financing lease and taxable as an installment sale. Although not incorrect on its face, the ETA provides insufficient information for determining correct tax application. The ETA also discusses gross income as it applies to property taxes paid by the lessee and interest and carrying charges. WAC 458-20-211 currently addresses property taxes and insurance as additional income while WAC 458-20-109 provides detailed information about interest and carrying charges.

ETA 520 should be canceled as WAC 458-20-211 provides adequate discussion of the issue. This ETA discusses the true object test as it applies to the rental of tangible personal property when the lessor provides additional services. WAC 458-20-211 incorporates a discussion about the true object test as it applies to the rental of equipment with an operator. It also explains that the true object test can be applied to rentals of tangible personal property when the lessor performs some service in connection with the rental.

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?



(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

4. Clarity and Effectiveness:

YES	NO	
		Is the document written and organized in a clear and concise manner?
		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
		Do changes in industry practices warrant repealing or revising this document?
		Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

5. Intent and Statutory Authority:

YES	NO	
		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
		Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.



6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
		Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
		Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
		Does the document result in equitable treatment of those required to comply with it?
		Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
		Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent the following apply to charges for rentals of tangible personal property:**

RCW 82.04.040¾ “Sale,” “casual sale;”
RCW 82.04.050¾ “Sale at retail,” “retail sale;”
RCW 82.04.070¾ “Gross proceeds of sale;”
RCW 82.04.080¾ “Gross income of the business;”
RCW 82.04.190¾ “Consumer;”



RCW 82.08.010~~3/4~~ Definitions

RCW 82.08.020~~3/4~~ “Tax imposed~~3/4~~”Retail sales . . . ;”

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):



Administrative Decisions (e.g., WTDs):

ETA 283.08.211:

- **Det. No. 87-352, 4 WTD 289 (1987) discusses vehicle leases that were actually installment sales rather than leases as characterized by the taxpayer. Determination issued before February 24, 1996 revision to WAC 458-20-211.**

ETA 520.04.211:

- **Det. No. 99-100, 19 WTD 440 (2000) concluded that “true object” of charge for one copy of training materials and license to produce certain number of copies was sale of materials. Mere reference to ETA.**
- **Det. No 98-195, 18 WTD 342 (1999) discusses the difference between a retail or wholesale sale of canned computer software to consumers and distributors and licensing the software to OEMs for packaging with computer equipment for resale. Determination concluded that true object test of licensing software to consumer is for consumer to acquire and use the canned software on the consumer’s equipment. In the case of the sale of the right to reproduce by the OEM, the OEM acquires tangible personal property in the form of a master copy, however, the copy is incidental to the OEM’s rights to reproduce and relicense the software. Mere reference to ETA.**

Attorney General’s Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

10. Review Recommendation:

_____ Amend

_____ **X** _____ Repeal

_____ Leave as is

_____ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

_____ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you’ve identified/recommended earlier in this review document.)

Existing rules sufficiently discuss issues addressed by ETA 283 and 520. Both ETAs should be canceled.





11. Manager action: Date: _____

_____ Reviewed recommendation _____ Accepted recommendation

_____ Returned for further action

Comments: